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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/490,903	01/25/2000	Michael Lynch	LYNM-002	7799

7590

09/30/2002

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EXAMINER

NINO, ADOLFO

ART UNIT

PAPER NUMBER

2831

DATE MAILED: 09/30/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Applicati n N .

09/490,903

Applicant(s)

LYNCH, MICHAEL

Examiner

Adolfo Nino

Art Unit

2831

-- The MAILING DATE of this communication appears on the cover sheet with the corresponding address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 06 July 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 6 is/are rejected.
- 7) ☒ Claim(s) 5 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 January 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

### ***Sp cification***

Applicant is reminded of the proper content of an abstract of the disclosure.

A patent abstract is a concise statement of the technical disclosure of the patent and should include that which is new in the art to which the invention pertains. If the patent is of a basic nature, the entire technical disclosure may be new in the art, and the abstract should be directed to the entire disclosure. If the patent is in the nature of an improvement in an old apparatus, process, product, or composition, the abstract should include the technical disclosure of the improvement. In certain patents, particularly those for compounds and compositions, wherein the process for making and/or the use thereof are not obvious, the abstract should set forth a process for making and/or use thereof. If the new technical disclosure involves modifications or alternatives, the abstract should mention by way of example the preferred modification or alternative.

The abstract should not refer to purported merits or speculative applications of the invention and should not compare the invention with the prior art.

Where applicable, the abstract should include the following:

- (1) if a machine or apparatus, its organization and operation;
- (2) if an article, its method of making;
- (3) if a chemical compound, its identity and use;
- (4) if a mixture, its ingredients;
- (5) if a process, the steps.

Extensive mechanical and design details of apparatus should not be given.

The abstract of the disclosure is objected to because it needs to be one paragraph and it is too short. Correction is required. See MPEP § 608.01(b).

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4 are rejected under 35 U.S.C. 102(b) as being anticipated by Stirn (US 3,251,161).

Regarding claim 1 (Amended), Stirn discloses an apparatus (10) for protecting animals from contacting power lines comprising: a cylindrical member (12) for engaging a wire (14); and securing means (16) for securing cylindrical member to said wire. Note that it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. Ex parte Masham, 2 USPQ 2d 1647 (1987).

Regarding claim 2, Stirn discloses an apparatus (10) as described in claim 1 wherein said cylindrical member (12) comprises a dielectric material (col. 2, lines 50-65).

Regarding claim 3, Stirn discloses an apparatus (10) as described in claim 2 wherein said dielectric material comprises a polymer material (col. 2, lines 50-65).

Regarding claim 4 (Amended), Stirn discloses an apparatus (10) as described in claim 1 wherein said securing means (16) comprises at least one helical member for wrapping around (fig. 1; col. 2, lines 30-32) said wire (14).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim 6 (Amended) is rejected under 35 U.S.C. 103(a) as being unpatentable over Stirn (US 3,251,161) in view of Donoho et al. (US 5,433,029). Stirn discloses an apparatus (10) as described in claim 4 except for further comprising a spike disposing perpendicular to a longitudinal axis of said cylindrical member. Donoho et al. teach that it is known to have a spike disposing perpendicular to a longitudinal axis of a cylindrical member. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have a spike disposing perpendicular to a longitudinal axis of said cylindrical member as taught by Donoho et al., since Donoho et al. state at column 1, lines 8-16 that such a modification would prevent birds from landing or perching on a wire.

### ***Allowable Subject Matter***

Claim 5 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter: The prior art does not disclose or teach, alone or in combination, the limitation

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therein of "a notch in said cylindrical member for accommodating an insulator as commonly disposed on a power pole" in combination with the other claim limitations.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Williams (US 6,291,774 B1) discloses a wildlife guard cover. Bowling et al. (US 6,255,597 B1) disclose a wildlife guard. Mabry et al. (US 6,239,357 B1) disclose a flashover protection cover. Spillyards (US 6,005,196) discloses a triggered wildlife guard. Harben (US 5,682,015) discloses a squirrel shield device. Killop et al. (US 4,453,353) disclose a guy wire protector. Apperson et al. (US 4,449,010) disclose an insulator guard. Cutter (US 4,234,753) discloses an electrical insulator and conductor cover. Yotsugi (US 3,900,698) discloses an electric wire insulating cover. West (US 3,835,238) discloses a spiral conductor cover. Schneiderman (US 3,194,878) discloses an insulating shield. Farough et al. (US 3,133,984) disclose a lineman protector device. Salisbury (US 3,042,736) discloses a protective cover. Tipsord et al. (US 2,871,282) disclose a hot line guard. Runde (US 2,770,667) discloses an electrical protective device. Alvord (US 1,996,894) discloses an anti-climbing device. Salisbury (US 1,598,155) discloses a device for protecting linemen.

***R sponse to Argum nts***


Applicant's arguments with respect to claims 1-6 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Adolfo Nino whose telephone number is (703) 305-1071. The examiner can normally be reached on M-F (7:30-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dean A Reichard can be reached on (703) 308-3682. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-3431 for regular communications and (703) 305-1341 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0956.

AN  
September 14, 2002

  
CHAU N. NGUYEN  
PRIMARY EXAMINER